United Nations CRC/C/OPSC/VAT/CO/1

Convention on the Rights of the Child

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Committee on the Rights of the Child

Concluding observations on the report submitted by the Holy See under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*

1. The Committee considered the initial report of the Holy See (CRC/C/OPSC/VAT/1) at its 1853rd meeting (see CRC/C/SR.1853), held on 16 January 2014, and adopted at its 1875th meeting, held on 31 January 2014, the following concluding observations.

I. Introduction

2. The Committee welcomes the submission of the initial report of the Holy See and its written replies to the list of issues (CRC/C/OPSC/VAT/Q/1/Add.1). However, the Committee regrets that the report was submitted with a six-year delay and that the Holy See did not respond to questions relating to the implementation of the Optional Protocol by individuals and institutions operating under its legal authority. The Committee welcomes the dialogue with the multisectoral delegation of the Holy See.

3. While fully aware that bishops and major superiors of religious institutes do not act as representatives or delegates of the Roman Pontiff, the Committee notes that subordinates in Catholic religious orders are bound by obedience to the Pope, in accordance with Canons 331 and 590 of the Code of Canon Law. The Committee therefore reminds the Holy See that in ratifying the Optional Protocol, it made a commitment to implement it not only within the territory of Vatican City State, but also, as the supreme power of the Catholic Church, worldwide through individuals and institutions under its supreme authority.

4. The Committee reminds the Holy See that the present concluding observations should be read in conjunction with the concluding observations on the second periodic report submitted by the Holy See under the Convention on the Rights of the Child (CRC/C/VAT/CO/2) and on its initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC/C/OPAC/VAT/CO/1), both of which were also adopted on 31 January 2014.

* Adopted by the Committee at its sixty-fifth session (13–31 January 2014).

II. General observations

Positive aspects

5. The Committee welcomes the measures taken by the Holy See in areas relevant to the implementation of the Optional Protocol, including:

(a) The Apostolic Letter on the jurisdiction of the judicial authorities of Vatican City State in criminal matters, issued *motu propio* by the Roman Pontiff, on 11 July 2013;

(b) Vatican City State Law No. VIII of 11 July 2013, containing Complementary Norms on Penal Matters, Title II: Crimes Against Children;

(c) Vatican City State Law No. IX of 11 July 2013, containing Amendments to the Criminal Code and the Criminal Procedure Code ;

(d) The creation of a pastoral Commission for the Protection of Minors, with the aim of proposing new initiatives for the development of safe environment programmes for children and improving efforts for the pastoral care of victims of abuse around the world, on 5 December 2013;

(e) The establishment of a special office within the Governorate of Vatican City State to oversee the implementation of international agreements to which Vatican City State is a party, on 10 August 2013.

6. The Committee also notes with appreciation the ratification of the United Nations Convention against Transnational Organized Crime, on 25 January 2012.

III. Data

7. The Committee is concerned that the Holy See did not provide the data requested by the Committee on cases of sale of children, child prostitution and child pornography dealt with by the Holy See during the reporting period and by the Congregation for the Doctrine of the Faith since 2001. The Committee is also concerned that the Holy See has not established a comprehensive data collection system to record, refer and follow up all cases relating to offences covered by the Optional Protocol and to analyse and assess progress in the implementation of the Optional Protocol.

8. **The Committee recommends that the Holy See develop and implement a comprehensive and systematic mechanism to collect and analyse data, and to monitor and assess the impact of cases in all areas covered by the Optional Protocol. The data should be disaggregated by, inter alia, sex, age, national and ethnic origin, geographical location, indigenous status and socioeconomic status, with particular attention to children in the most vulnerable situations, and should include information about the follow-up given to those cases. Until such a data collection system is established and used effectively for information sharing with States where offences are committed, the Committee urges the Holy See to ensure full and immediate disclosure to the competent national judicial authorities of all information on cases of sale of children, child prostitution and child pornography gathered by the Holy See and the Congregation for the Doctrine of the Faith since 2001, with a view to appropriate follow-up.**

IV. General measures of implementation

General principles of the Convention on the Rights of the Child (arts. 2, 3, 6 and 12)

9. The Committee is concerned that, in dealing with cases of child pornography involving members of the clergy, the Holy See has failed to ensure the right of children to express their views and to have them given due weight, and that the Holy See has given precedence to the preservation of the reputation of the Church over children's right to have their best interests taken as a primary consideration. The Committee is concerned that, in doing so, the Holy See has undermined the prevention of offences under the Optional Protocol and the capacity of child victims to report offences, thereby contributing to the impunity of perpetrators and further trauma for the child victims.

10. **The Committee reminds the Holy See of its obligation under article 8, paragraph 1 (b) and (c), and paragraph 3, of the Optional Protocol, and recommends that the Holy See take all necessary measures to ensure that the rights of child victims of sale, prostitution and pornography to express their views and to have their best interests taken as a primary consideration are protected and respected.**

Legislation

11. While welcoming the adoption of Vatican City State laws No. VIII and No. IX, which penalize offences under the Optional Protocol, the Committee is concerned that the application of those laws is restricted to the territory of Vatican City State and that they do not apply to all individuals and institutions operating under the supreme authority of the Holy See. The Committee is also concerned that the Holy See has still not amended and continues to apply Canon Law provisions which breach the Optional Protocol, in particular with regard to the legal definition of those offences as crimes, and the procedure for addressing them.

12. **The Committee urges the Holy See to bring all its norms and regulations, including Canon Law, into line with the Optional Protocol and ensure that the same laws apply to Vatican City State and individuals and institutions operating under its supreme authority. The Committee also urges the Holy See to amend without delay all Canon Law provisions which contradict the Optional Protocol, in particular the 1962 *Crimen Sollicitationis* and the 2011 *Sacramentorum Sanctitatis Tutela*.**

Coordination and evaluation

13. The Committee is concerned that the Holy See does not have a coordinating body providing leadership and effective general oversight for the monitoring and evaluation of activities to implement the Optional Protocol.

14. **The Committee recommends that the Holy See create a coordinating body capable of monitoring and evaluating activities for the implementation of the Optional Protocol.**

Dissemination and awareness-raising

15. While welcoming the publication and distribution to educators of materials on children's rights and the Optional Protocol by Catholic specialized institutions, the Committee is concerned that similar measures have not been taken by the Holy See to raise awareness about the Optional Protocol among children, their families and the public at

large, nor, in particular, to inform children on how to protect themselves and to report offences.

16. **The Committee recommends that the Holy See make full use of its moral authority and adopt a comprehensive approach to making the Optional Protocol widely known among the public at large, including children, their families and communities, and to that aim, develop, in close cooperation with civil society organizations, the media, the private sector, communities and children themselves, awareness-raising programmes, including campaigns, on all issues covered by the Optional Protocol. The Holy See should also ensure that individuals and institutions operating under its authority worldwide, including Catholic schools, play an active role in that regard, including in translating the Optional Protocol into local languages and in disseminating it in child-friendly formats.**

Training

17. The Committee notes as positive the programmes developed by Catholic institutions at the national level, such as the Catholic Pastoral Awareness Programme developed in Kenya to train teachers in Catholic schools to detect and address situations in which children are at risk of abuse and exploitation. The Committee is concerned, however, that the Holy See has not developed and disseminated similar programmes to all individuals and institutions operating under its authority, and continues to refer exclusively to the 2011 Circular Letter to assist episcopal conferences in developing guidelines for dealing with cases of sexual abuse of minors perpetrated by clerics, which has proven ineffective in protecting children and in providing individuals and institutions with appropriate guidance on how to deal with those offences.

18. **The Committee urges the Holy See to provide appropriate guidelines and training material on the prevention, detection and appropriate handling of offences under the Optional Protocol to all individuals and institutions operating under its authority. The Holy See should ensure that teachers and personnel in Catholic schools and institutions systematically receive such training, and earmark the necessary resources to conduct such training.**

Allocation of resources

19. The Committee is concerned that the Holy See has made no budgetary allocation for the development and implementation of programmes aimed at preventing offences under the Optional Protocol, protecting children and providing child victims of offences committed by individuals under its authority with support for their physical and psychological recovery and social integration. The Committee is also concerned that the Holy See has no specific budget allocation for activities aimed at promoting the Optional Protocol at the international level.

20. **The Committee recommends that the Holy See accord high priority to allocating sufficient human, technical and financial resources for the development and implementation of programmes aimed at the prevention of the offences covered by the Optional Protocol, and the protection and rehabilitation of child victims.**

V. Prevention of the sale of children, child prostitution and child pornography (art. 9 (1 and 2))

Measures adopted to prevent offences prohibited under the Protocol

21. The Committee welcomes the various initiatives developed by Catholic congregations and organizations around the world to support children in vulnerable situations, as well as indications that the Holy See employs its moral leadership worldwide to address factors contributing to offences under the Optional Protocol. The Committee is concerned, however, that the Holy See has not applied a similar approach to individuals under its authority, nor has it taken timely and appropriate measures to prevent priests and nuns from committing offences covered by the Optional Protocol. The Committee is particularly concerned about cases of priests who have produced, possessed and disseminated child pornography, but have knowingly been kept in contact with children.

22. **The Committee urges the Holy See to ensure the immediate removal from ministry of all priests suspected of involvement in child pornography and other crimes covered by the Optional Protocol, and to adopt without delay regulations, guidelines and mechanisms to effectively prevent children from becoming victims of offences under the Optional Protocol. The Committee urges the Holy See to ensure that the Pastoral Commission for the Protection of Minors, which was created in December 2013, undertakes a comprehensive assessment of policies and practices applied by the Holy See to cases of child pornography involving individuals who are under its authority, and to ensure that the outcome of that assessment is made public and accessible to all, especially to the victims.**

Sale of children and adoption

23. The Committee expresses deep concern about the discovery in 2011 that thousands of babies had been removed from their mothers in maternity wards in Spain and sold by networks of doctors, priests and nuns to childless couples who were considered to be more appropriate parents. The Committee is also concerned that similar practices were also carried out in other countries, such as Ireland, where babies were systematically taken away from girls and women detained in the Magdalene laundries.

24. **The Committee urges the Holy See to ensure that individuals and institutions operating under its authority that have organized, participated in and assisted in the removal of babies from their mothers and the transfer of those babies for remuneration or any other consideration to childless couples, individuals or institutions are held accountable. The Committee urges the Holy See to ensure a full disclosure of all the information gathered by the institutions and individuals involved in those offences, in order to facilitate victims' access to information on their biological filiation.**

25. The Committee is concerned that although many Catholic institutions and organizations are involved in intercountry adoptions, the Holy See has not taken the necessary measures to ensure that Catholic institutions do not engage in unlawful adoption.

26. **In the light of article 5 of the Optional Protocol, the Committee urges the Holy See to adopt, as a matter of priority, appropriate legal and administrative measures to ensure that all individuals and institutions under its authority that are involved in the adoption of a child, act in conformity with applicable international legal instruments. The Committee recommends that the Holy See consider ratifying the 1993 Hague**

Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

VI. Prohibition of the sale of children, child pornography and child prostitution and related matters (arts. 3, 4 (2 and 3), 5, 6 and 7)

Existing criminal or penal laws and regulations

27. While welcoming the adoption, in July 2013, of Vatican City State laws No. VIII containing Complementary Norms on Penal Matters, Title II: Crimes against Children, and No. IX containing Amendments to the Criminal Code and the Criminal Procedure Code, the Committee is concerned that:

(a) Laws No. VIII and No. IX apply only to Vatican City State and do not address offences committed by individuals and institutions under the authority of the Holy See, which continue to be subject to Canon Law provisions;

(b) The 2011 Circular Letter to assist episcopal conferences in developing guidelines for dealing with cases of sexual abuse of minors perpetrated by clerics gives precedence to Canon law proceedings over national penal proceedings for dealing with offences under the Optional Protocol.

28. **The Committee urges the Holy See to:**

(a) Extend the application of laws No. VIII and No. IX to all individuals and institutions operating under its authority;

(b) Adopt clear rules for the immediate referral of all suspected cases of offences under the Optional Protocol to national law enforcement authorities, even in cases where national laws do not make reporting of such crimes compulsory.

Prosecution and impunity

29. The Committee is deeply concerned that the vast majority of priests and clerics who have committed acts involving child pornography, as well as those who have concealed such crimes, have benefited from impunity. The Committee is particularly concerned that:

(a) Canon Law provisions and proceedings which have allowed perpetrators to escape justice by imposing an obligation of silence on victims, prevented the reporting of child pornography-related cases to national law enforcement authorities and handed down punishment that is not commensurate with the gravity of the offences committed are still in force and applied;

(b) On numerous occasions, the Holy See has refused to cooperate with law enforcement authorities and disclose information requested by prosecutors and national commissions of inquiry;

(c) The Holy See has signed treaties with certain States, notably Italy, which guarantee immunity from prosecution in certain areas to Vatican officials, including bishops and priests accused of offences under the Optional Protocol.

30. **The Committee urges the Holy See to repeal without delay all Canon Law provisions which have created an environment that favours impunity for perpetrators of crimes under the Optional Protocol. The Holy See should also amend its internal**

guidelines and ensure transparent and effective cooperation with national law enforcement authorities. The Committee further urges the Holy See to revoke the parts of treaties that it has signed with States which would contribute to impunity for perpetrators of child sexual abuse.

Extradition

31. The Committee notes that while the Holy See does not seek the extradition of persons for the purpose of prosecution, it extradites persons to the Italian authorities in accordance with article 22 of the Lateran Pact, on the basis of the double criminality rule. The Committee is particularly concerned that, in January 2014, the Holy See refused the requests of a Polish prosecutor to extradite an archbishop from the Vatican to Poland to face charges, including charges of child pornography.

32. **The Committee urges the Holy See to take the necessary measures to ensure that all the offences under article 3, paragraph 1, of the Optional Protocol are extraditable offences, and that the requirement of double criminality for extradition and/or prosecution of offences committed abroad is repealed. The Committee also urges the Holy See to use, where necessary, the Optional Protocol as the legal basis for extradition, in conformity with article 5 thereof, and to proceed with the extradition of any clerics facing charges of child sexual abuse abroad.**

VII. Protection of the rights of child victims (arts. 8 and 9 (3 and 4))

Measures adopted to protect the rights of child victims of offences prohibited under the Optional Protocol

33. The Committee is concerned that despite the many obstacles that child victims of crimes prohibited under the Optional Protocol encounter in reporting the offences they have been subjected to by Catholic priests, the Holy See still does not consider it necessary, as a legal requirement under article 8, paragraph 1, of the Optional Protocol, to create a child-friendly mechanism for children to make complaints. The Committee is also deeply concerned that:

(a) Canon Law, which has been and continues to be applied to offences under the Optional Protocol, does not contain any provision on the protection of the rights and interests of child victims of offences under the Optional Protocol;

(b) In many cases, child victims and their families have been re-victimized by the authorities of the Catholic Church, as noted by several national commissions of inquiry.

34. **In the light of article 9, paragraph 3, of the Optional Protocol, the Committee urges the Holy See to take all the necessary measures to protect the rights and interests of child victims of all offences under the Optional Protocol, and to ensure that the best interests of the child are a primary consideration in the treatment afforded by the criminal justice system to child victims. The Committee urges the Holy See to:**

(a) Establish, without further delay, a child-friendly mechanism and procedures for complaints, remedy and redress in relation to all offences under the Protocol;

(b) Develop guidelines on child protection for all individuals and institutions operating under the authority of the Holy See and ensure that training is provided on those guidelines;

(c) Establish mechanisms and procedures for the early identification of child victims of offences under the Optional Protocol, including by establishing cooperation mechanisms with national law enforcement authorities;

(d) Ensure that child victims are no longer victimized by Church authorities when they denounce crimes under the Optional Protocol.

Recovery and reintegration of victims

35. While noting that the Holy See seeks to inspire States parties to the Optional Protocol to provide assistance to child victims of offences covered by the Optional Protocol, and that the Catholic Church provides assistance to child victims of sexual exploitation, the Committee is concerned about the absence of appropriate measures taken by the Holy See to provide assistance to child victims of offences committed by clerics with regard to their physical and psychological recovery and social reintegration. The Committee is also particularly concerned that:

(a) Canon Law, which has been used to deal with cases of child pornography offences committed by Catholic priests, does not contain any provision on the recovery and reintegration of the victims;

(b) The Holy See has not directly cooperated with States Parties in assisting children, as indicated in its written replies to the Committee;

(c) Confidentiality and silence on the part of victims and their families have been imposed as a condition for the financial compensation to child victims of abuses under the Optional Protocol.

36. **The Committee urges the Holy See to take all appropriate measures for the physical and psychological recovery and social reintegration of child victims of all offences under the Optional Protocol, and to ensure that those measures are taken in an environment that fosters the self-respect and dignity of the child. The Committee also urges the Holy See to fulfil its obligation to provide compensation to victims of offences committed by individuals and institutions operating under its authority without imposing any obligation of confidentiality on the victims. To this aim, the Holy See should establish a compensation scheme for victims of offences under the Optional Protocol committed by clerics.**

VIII. International assistance and cooperation (art. 10)

Multilateral, regional and bilateral agreements

37. **In the light of article 10, paragraph 1, of the Optional Protocol, the Committee encourages the Holy See to strengthen international cooperation through multilateral, regional and bilateral arrangements, by strengthening procedures and mechanisms for coordinating with law enforcement authorities and for improving the prevention, detection, investigation, prosecution and punishment of those responsible for any offence under the Optional Protocol. In this context, the Committee urges the Holy See to exclude offences under the Optional Protocol from any immunity agreement with States. The Committee also urges the Holy See to consider ratifying the Council**

of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

IX. Follow-up and dissemination

38. **The Committee recommends that the Holy See take all appropriate measures to ensure the full implementation of the present recommendations by, inter alia, transmitting them to the Pope, the Curia, the Congregation for the Doctrine of the Faith, the Congregation for Catholic Education, Catholic health-care institutions, the Pontifical Council for the Family, episcopal conferences and individuals and institutions operating under the authority of the Holy See, for appropriate consideration and further action.**

39. **The Committee recommends that the initial report and written replies submitted by the Holy See, as well as the present concluding observations, be made widely available, including through the Internet, to the public at large, civil society organizations, youth groups, professional groups and children, in order to generate debate and foster awareness of the Optional Protocol, and its implementation and monitoring.**

X. Next report

40. **In accordance with article 12, paragraph 2, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the Committee requests the Holy See to include further information on the implementation of the Optional Protocol and the recommendations contained in the present concluding observations in its next periodic report under the Convention on the Rights of the Child, to be submitted in accordance with article 44 of the Convention.**